LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

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FISCAL IMPACT STATEMENT

LS 7133
BILL NUMBER: HB 1273

NOTE PREPARED: Feb 24, 2004
BILL AMENDED: Feb 23, 2004

SUBJECT: ICHIA Amendments.

FIRST AUTHOR: Rep. Fry
FIRST SPONSOR: Sen. Miller

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: This bill amends the Indiana Comprehensive Health Insurance Association (ICHIA) law concerning: (1) premium rates; (2) assessments; (3) tax credits; (4) reporting requirements; (5) member grievances; (6) reimbursement rates; (7) provider contracting; (8) balance billing.

The bill also makes technical corrections, conforming amendments, and repeals sections concerning Medicaid payment programs. The bill also makes an appropriation.

Effective Date: January 1, 2004 (retroactive); March 15, 2004 (retroactive); April 1, 2004; July 1, 2004; January 1, 2005.

Explanation of State Expenditures: *ICHIA Funding Methodology.* This bill changes the method by which the ICHIA program is funded. Currently, net losses of ICHIA are paid by member carriers, who may then, in turn, claim the assessment amount as a tax credit against premium taxes and adjusted gross income taxes. The amount of tax credits claimed represents the cost to the state in the form of forgone tax revenue. Currently, unused tax credits may be carried forward indefinitely.

The bill provides that, beginning January 1, 2005, ICHIA will assess members 25% of net losses and the balance, or 75%, is to be paid from the state General Fund. Also beginning January 1, 2005, members will no longer be able to offset new expenditures in the ICHIA program with tax credits. However, any unused tax credits existing on January 1, 2005, may be claimed against a member's tax liability in tax years beginning after December 31, 2006, provided that no more than 10% of the amount existing on January 1, 2005, is claimed in any one year.

Assuming that only 80% of tax credits are ever claimed by members under the current system, at least in the near term, which represents the current cost of the program borne by the state, and assuming net losses of $66.73 M as occurred in CY 2002, the state (by paying 75% of net losses rather than 80% through forgone revenue from tax credits) would experience a positive annual fiscal impact of about $3.3 M with no additional accumulation of tax credits after January 1, 2005.

To the extent that net losses of the ICHIA program are greater than $66.73 M, and to the extent that members are actually currently able to claim more than 80% of their tax credits as estimated above, the fiscal impact of this bill would be greater than $3.3 M, and vice versa.

This bill makes a one-time appropriation from the state General Fund in an amount sufficient to pay the state's 75% share for the period beginning January 1, 2005, and ending June 30, 2005 (the end of the current biennium).

[Note: Under these provisions, it should be noted that the state will be funding 75% of the net losses of the program, while at the same time continuing to experience revenue reductions after 2006 from tax credits claimed by members from the total amount of unused credits existing on January 1, 2005. However, the unused tax credits existing on the effective date of the bill represent a liability to the state under current statute. The total amount of this liability is unaffected by the bill. Consequently, the existing stockpile of unused credits is not factored into the estimated fiscal impact attributable to the bill.]

Premium Rate Calculation. The proposal provides that ICHIA premium rates may be adjusted by the percentage change in medical cost experienced by ICHIA minus the percentage change in the Indiana medical care component of the Consumer Price Index for all Urban Consumers, as published by the United States Bureau of Labor Statistics during the preceding calendar year. A positive or negative adjustment in the rate calculated may not be greater than 10%. This provision will have an impact on state expenditures to the extent that any change in premiums could change net operating losses experienced by ICHIA which could impact the amount that needs to be paid by the state. The impact will depend on ICHIA net losses.

Penalty for Late Payment. A member assessment is due not more than 30 days after the member receives written notice of the assessment. A member that pays an assessment after the due date shall pay interest on the assessment at the rate of 6% per annum. This provision will have an impact on state expenditures to the extent that any change in ICHIA revenue and net operating losses could impact the amount that needs to be paid from the state General Fund.

Appeal Procedures. If a member is aggrieved by an act of ICHIA, the member or health care provider must, not more than 90 days after the act occurs, appeal to the ICHIA board of directors for review of the act. If within 30 days after an appeal is filed, the board has not acted on the appeal or the member or health care provider is aggrieved by a decision of the board, the member may appeal to the Commissioner of Insurance. This provision could add administrative expenses to the Department of Insurance. It is presumed that the DOI will be able to absorb any additional expenses given its current resources and budget. If a member sues ICHIA, the court may not award to the member attorney's fees, costs, or punitive damages.

Reporting of Tax Credits. ICHIA members must, not later than October 31 of each year, certify an independently audited report to ICHIA that describes the amount of assessments paid by the member against which a tax credit has not been taken.

Use of ICHIA Assessments as Medicaid Match. The bill repeals provisions which would allow the use of ICHIA assessments as the state share of payments in the Medicaid program. Approval by the Centers for Medicare and Medicaid Services (CMS) for these provisions is not currently anticipated.

Background Information: Under current statute, all carriers, health maintenance organizations, limited service health maintenance organizations, and self-insurers providing health insurance or health care services in

Indiana are members of the Indiana Comprehensive Health Insurance Association. Prior to January 2003, ICHIA was funded through premiums paid by individuals obtaining insurance through ICHIA and by assessments to member companies (excluding self-insurers preempted by ERISA). The assessments were based on premiums received. Beginning in January 2003, assessments were based on lives covered. Effective July 1, 2003, assessments were based on both premiums received (50%) and lives covered (50%).

To be eligible for an ICHIA policy, Indiana residents must show evidence of being denied insurance coverage by one carrier for coverage under any insurance plan that meets or exceeds the minimum requirements for accident and sickness insurance policies issued in Indiana without material underwriting restriction; an insurer has refused to issue insurance except at a rate exceeding the ICHIA plan rate; or the individual is eligible under the federal Health Insurance Portability and Accountability Act (HIPAA). The individual also may not be eligible for Medicaid or Medicare.

The net losses of ICHIA (the excess of expenses over premiums and other revenue) are currently made up by assessments on member insurance carriers. Members may, in turn, (1) take a credit against Premium Taxes, Adjusted Gross Income Taxes, or any combination of these or similar taxes; or (2) include in the rates for premiums charged for their insurance policies amounts sufficient to recoup the assessments.

Currently, assessments are made three times a year. The assessment anticipates medical costs and is sent to providers in advance of the payment of medical costs. At the end of each year, a determination is made to adjust for over-assessments or under-assessments. These adjustments are referred to as "true-ups. Assessments have increased from $18.79 M in 1997 to $66.73 M in 2002.

Members have been required by statute to report the amount of their assessments that they claim as tax credits. From the two years that have been reported to date, members claimed about 64% of the assessments paid in 2001 as tax credits in tax year 2001 and an additional 8% was claimed in tax year 2002. This represents a total of 72% in the two-year period. In the estimate above, this percentage is assumed to continue to grow to at least 80% and represents the near-term program costs borne by the state in the form of forgone revenues. (To the extent that the percentage of assessments able to be claimed by members is actually greater than 80%, the benefit to the state from the new system provided by this bill would be greater than that estimated above.) It should also be noted that the assumed 20% of assessments that are not claimed as tax credits in the near term, still represent a liability incurred by the state which may at some time in the future result in revenue losses.

<u>Explanation of State Revenues:</u> (Revised) *Tax Credits.* Beginning January 1, 2005, the ability to claim any new tax credits for assessments paid is eliminated. However, members will retain the ability to factor the assessments into their premium rates. In addition, an ICHIA member that, before January 1, 2005, has paid an assessment and not taken a credit against taxes may, commencing with tax years beginning after 2006, take not more than 10% of the amount of the unused tax credit that exists on January 1, 2005, in any taxable year. If a member's tax liability is less than the 10% limit for any taxable year, the unused credit may be carried forward without being subject to the 10% limit in future years. Based on survey results, the Department of Insurance expects a total of $75 to $80 M in tax credits outstanding as of the end of 2002. Additional credits may be accumulated in 2003 and 2004.

The proposal will also cause a redistribution of who pays for the program losses by the members. Currently, carriers have differing income and tax situations resulting in differing abilities to use their credits. Under the bill, each will be assessed their share of the 25% of net losses. In addition, the current distribution of assessments is based 50% on each carrier's proportion of health insurance premium volume in the state and 50% on covered lives. Under current statute, after March 15, 2004, the assessment methodology will revert to either 100% based on premium volume or “any other equitable basis as determined by the ICHIA Board. The bill, however, extends the 50/50 methodology until January 1, 2005, at which point the assessment methodology will revert to 100% based on premium volume. The bill eliminates the authority of the Board to determine another “equitable basis for assessment. These changes will affect the distribution of assessments paid by the carriers and not the total amount of assessments paid.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of Insurance; ICHIA; Department of State Revenue.

Local Agencies Affected:

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